

2013 WL 6499719 (C.D.Cal.) (Trial Motion, Memorandum and Affidavit)  
United States District Court, C.D. California.

Karen LEITNER, Plaintiff,

v.

SADHANA TEMPLE OF NEW YORK, INC., a New York corporation; Kunwar  
Surendra Kumar; Sarah Carson; Naomi Aschner; Barbara Thompson, Defendants.

No. 2:13-cv-07902-MMM-E.  
November 22, 2013.

Action Filed: October 25, 2013

(Declaration of James E. Fitzgerald Filed and (Proposed) Order Lodged Concurrently Herewith)

Date: March 10, 2014

Time: 10:00 a.m.

Courtroom: 780

**Notice of Motion and Motion to Dismiss Complaint; Memorandum of Points and Authorities in Support Thereof**

Stroock & Stroock & Lavan LLP, [James E. Fitzgerald](#) (State Bar No. 108785), [Bryan M. Wittlin](#) (State Bar No. 286382),  
2029 Century Park East, Los Angeles, CA 90067-3086, Telephone: 310-556-5800, Facsimile: 310-556-5959, Email:  
lcalendar@stroock.com.

Attorneys for Defendants, Sadhana Temple of New York, INC., Sarah Carson, Naomi Aschner and Barbara Thompson.

Assigned to the Honorable [Margaret M. Morrow](#).

**TABLE OF CONTENTS**

I. INTRODUCTION .....	1
II. ALLEGATIONS AND FACTUAL BACKGROUND .....	2
III. ARGUMENT .....	4
A. THE STANDARD FOR A RULE 12 MOTION TO DISMISS .....	4
B. LEITNER'S CLAIM FOR PROMISSORY ESTOPPEL IS FRIVOLOUS .....	4
1. The Promissory Estoppel Claim is Time-Barred .....	4
2. The Promissory Estoppel Claim Fails .....	7
C. LEITNER'S CLAIM FOR UNJUST ENRICHMENT HAS NO MERIT .....	8
1. The Unjust Enrichment Claim is Time-Barred .....	8
2. Leitner Fails To State A Meritorious Unjust Enrichment Claim .....	8
D. LEITNER'S CLAIM FOR FRAUD IS FRIVOLOUS .....	9
1. The Fraud Claim is Time-Barred .....	9
2. The Fraud Claim Is Insufficiently Plead .....	10
E. LEITNER'S CLAIM FOR BREACH OF FIDUCIARY DUTY IS NOT VIABLE .....	12
1. The Breach of Fiduciary Duty Claim is Time-Barred .....	12
2. No Fiduciary Duty Was Owed By The Defendants To Leitner .....	13
F. LEITNER'S CLAIM FOR CONSTRUCTIVE FRAUD IS NOT VIABLE .....	14
1. The Constructive Fraud Claim is Time-Barred .....	14
2. The Constructive Fraud Claim is Insufficiently Plead .....	14
G. LEITNER'S CLAIM FOR CONVERSION LACKS ANY MERIT .....	15
1. The Conversion Claim is Time-Barred .....	15
2. The Conversion Claim Fails Because Leitner Fails To Identify Specific Funds That Were Converted .....	16
H. LEITNER'S CLAIM FOR <b>FINANCIAL ELDER ABUSE</b> IS TIME-BARRED AND LACKS MERIT	17

I. LEITNER'S CLAIM FOR INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS CANNOT BE SUSTAINED .....	18
1. This Claim is Time-Barred .....	18
2. The IIED Claim Has No Substantive Merit .....	19
J. LEITNER'S CLAIM FOR DISSOLUTION OF JOINT VENTURE LACKS MERIT .....	20
1. The Claim For A Dissolution of Joint Venture Is Time-Barred .....	20
2. The Dissolution of Joint Venture Claim Lacks Merit Because The "Family" Is Not A Partnership Or Joint Venture .....	21
K. THE ACCOUNTING CLAIM IS TIME-BARRED AND LACKS MERIT .....	22
IV. CONCLUSION .....	23

#### **TABLE OF AUTHORITIES**

##### **CASES**

<i>Alfaro v. Cnty. Hous. Imp. Sys. &amp; Planning Ass'n, Inc.</i> , 171 Cal. App. 4th 1356 (2009) .....	13
<i>AmerUS Life Ins. Co. v. Bank of America, N.A.</i> , 143 Cal. App. 631 (2006) .....	15
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009) .....	4
<i>Auditorium Co. v. Barsotti</i> , 40 Cal. App. 592 (1919) .....	21
<i>Barrett v. Bank of Am.</i> , 183 Cal. App. 3d 1362 (1986) .....	14
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007) .....	4
<i>Bennett v. Suncloud</i> , 56 Cal. App. 4th 91 (1997) .....	18
<i>Benun v. Super. Ct.</i> , 123 Cal. App. 4th 113 (2004) .....	17
<i>Billups v. Tiernan</i> , 11 Cal. App. 3d 372 (1970) .....	21, 22
<i>Bly-Magee v. California</i> , 236 F.3d 1014 (9th Cir. 2001) .....	10
<i>Bogard v. Empls Casualty Co.</i> , 164 Cal. App. 3d 602 (1985) .....	19
<i>Caffaso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.</i> , 637 F.3d 1047 (2011) .....	10, 11, 15
<i>Charnay v. Cobert</i> , 145 Cal. App. 4th 170 (2006) .....	12, 13
<i>City of Vista v. Robert Thomas Securities, Inc.</i> , 84 Cal. App. 4th 882 (2000) .....	12
<i>Cleveland v. Internet Specialties W., Inc.</i> , 171 Cal. App. 4th 24 (2009) .....	5, 6
<i>CMACO Auto. Sys., Inc. v. Wanxiang Am. Corp.</i> , 589 F.3d 235 (6th Cir. 2009) .....	5
<i>Cochran v. Cochran</i> , 56 Cal. App. 4th 1115 (1997) .....	5
<i>Cochran v. Cochran</i> , 65 Cal. App. 4th 488 (1998) .....	19
<i>Curran v. Mount Diablo Council of the Boy Scouts</i> , 17 Cal. 4th 670 (1998) .....	21
<i>Day v. Greene</i> , 59 Cal. 2d 404 (1963) .....	14
<i>Dealertrack, Inc. v. Huber</i> , 460 F. Supp. 2d 1177 (C.D. Cal. 2006) .....	14
<i>DeRose v. Carswell</i> , 196 Cal. App. 3d 1011 (1987) .....	18
<i>Ebeid ex rel. United States v. Lungwitz</i> , 616 F.3d 993 (9th Cir. 2010) .....	11, 15
<i>Edwards v. Marin Park, Inc.</i> , 356 F.3d 1058 (9th Cir. 2004) .....	10
<i>Estate of Fincher</i> , 119 Cal. App. 3d 343 (1981) .....	20, 22
<i>Federal Deposit Ins. Corp. v. Dintino</i> , 167 Cal. App. 4th 333 (2008) .....	8
<i>Hackethal v. Nat'l Cas. Co.</i> , 189 Cal. App. 3d 1102 (1987) .....	10
<i>Howard Jarvis Taxpayers Ass'n v. City of La Habra</i> , 25 Cal. 4th 809 (2001) .....	4
<i>In re Stac Electronics Sec. Litig.</i> , 89 F.3d 1399 (9th Cir. 1996) .....	10
<i>Iverson, Yoakum, Papiano &amp; Hatch v. Berwald</i> , 76 ... Cal. App. 4th 990 (1999) .....	4
<i>Jefferson v. J.E. French Co.</i> , 54 Cal. 2d 717 (1960) .....	22
<i>Laks v. Coast Fed. Sav. &amp; Loan Assn.</i> , 60 Cal. App. 3d 885 (1976) .....	7
<i>Lazar v. Super. Ct.</i> , 12 Cal. 4th 631 (1996) .....	10
<i>Lectrodryer v. SeoulBank</i> , 77 Cal. App. 4 <sup>th</sup> 723 (2000) .....	8
<i>Leeper v. Beltrami</i> , 53 Cal. 2d 195 (1959) .....	5
<i>Manok v. Fishman</i> , 31 Cal. App. 3d 208 (1973) .....	20, 22
<i>McKell v. Washington Mutual, Inc.</i> , 142 Cal. App. 4th 1457 (2006) .....	16
<i>Messerall v. Fulwider</i> , 199 Cal. App. 3d 1324 (1988) .....	15, 16
<i>Miller v. Bechtel</i> , 33 Cal. 3d 868 (1983) .....	5, 6, 13
<i>Mora v. U.S. Bank N.A.</i> , 2012 WL 2061629 (N.D. Cal. June 7, 2012) .....	7
<i>Moss v. U.S. Secret Service</i> , 572 F.3d 962 (9th Cir. 2009) .....	4
<i>Naftzger v. American Numismatic Soc.</i> , 42 Cal App 4th 421 (1996) .....	16

<i>Odom v. Microsoft Corp.</i> , 486 F.3d 541 (9th Cir. 2007) .....	11
<i>Parsons v. Tickner</i> , 31 Cal. App. 4th 1513 (1995) .....	5
<i>Pugliese v. Super. Ct.</i> , 146 Cal. App. 4th 1444 (2007) .....	18
<i>Sacramento E.D.M., Inc. v. Hynes Aviation Indus., Inc.</i> , 2013 WL 4407469 (E.D. Cal. Aug. 15, 2013) .....	14
<i>Sanchez v. S. Hoover Hosp.</i> , 18 Cal. 3d 93 (1976) .....	12
<i>Sec.-First Nat. Bank of Los Angeles v. Cooper</i> , 62 Cal. App. 2d 653 (1944) ....	21
<i>Semegen v. Weidner</i> , 780 F.2d 727 (9th Cir. 1985) .....	10
<i>Sherman v. Lloyd</i> , 181 Cal. App. 3d 693 (1986) .....	12
<i>Signal Hill Aviation Co., Inc. v. Stroppe</i> , 96 Cal. App. 3d 627 (1979) .....	7
<i>Stalberg v. Western Title Ins. Co.</i> , 230 Cal App. 3d 1223 (1991) .....	12
<i>Swartz v. KPMG LLP</i> , 476 F.3d 756 (9th Cir. 2007) .....	10
<i>Taguinod v. World Sav. Bank, FSB</i> , 755 F. Supp. 2d 1064 (C.D. Cal. 2010) ....	17
<i>Toscano v. Greene Music</i> , 124 Cal. App. 4th 685 (2004) .....	4, 7
<i>Weiner v. Fleischman</i> , 54 Cal. 3d 476 (1991) .....	21
<i>Zumbrun v. University of Southern California</i> , 25 Cal. App. 3d 1 (2000) .....	8, 13
<b>STATUTES</b>	
<i>Cal. Civ. Code § 1573</i> .....	14
California Code of Civil Procedure	
§ 338(c) .....	15
§ 338(d) .....	10
§ 339(1) .....	4
§ 340(3) .....	18
§ 343 .....	20, 22
<i>Cal. Corp. Code. § 16101(9)</i> .....	21
<i>Cal. Corp. Code § 16405</i> .....	20
<i>Cal. Welf. &amp; Inst. Code § 15610.27</i> .....	17, 18
<i>Cal. Welf. &amp; Inst. Code § 15657.7</i> .....	17
<b>OTHER AUTHORITIES</b>	
<i>Federal Rule of Civil Procedure 9(b)</i> .....	10, 14, 15
<i>Federal Rule of Civil Procedure 12(b)(6)</i> .....	4, 5

**TO: PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT on March 10, 2014, at 10:00 a.m., or as soon thereafter as counsel may be heard, in Courtroom 780 of the Edward R. Roybal Building of the United States District Court for the Central District of California, Western Division - Los Angeles, located at 255 E. Temple Street, Los Angeles, CA 90012, Defendants Sadhana Temple of New York, Inc. ("Sadhana Temple"), Naomi Aschner, Sarah Carson and Barbara Thompson will and hereby do move the Court pursuant to **Federal Rule of Civil Procedure 12(b)(6)** for an Order granting their Motion to Dismiss Plaintiff Karen Leitner's claims for (1) promissory estoppel; (2) unjust enrichment; (3) constructive fraud; (4) fraud; (5) breach of fiduciary duty; (6) conversion; (7) **financial elder abuse**; (8) intentional infliction of emotional distress; (9) involuntary dissolution of joint venture; and (10) accounting.

This motion is made following an attempted conference of counsel pursuant to L.R. 7-3 on November 21, 2013. This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Bryan M. Wittlin, the pleadings and records on file herein, and such other evidence and arguments as may be presented to the Court prior to or at the hearing of this Motion.

Respectfully submitted,

STROOCK & STROOCK & LAVAN LLP

JAMES E. FITZGERALD

BRYAN M. WITTLIN

By: /s/ James E. Fitzgerald

James E. Fitzgerald

Attorneys for Defendants

SadhanaTemple of New York, Inc., Sarah Carson, Naomi Aschner and Barbara Thompson

## I. INTRODUCTION

Plaintiff Karen Leitner (“Leitner”) has filed a cacophony of specious claims that are all procedurally time-barred and substantively frivolous. Defendants Sadhana Temple of New York, Inc. (“Sadhana Temple”), Naomi Aschner, Sarah Carson and Barbara Thompson (collectively, “Defendants”) have been forced to file this motion to dismiss because Leitner, after being given the opportunity to acknowledge the lack of merit in her claims, refused to withdraw the Complaint. Defendants are therefore also filing a Rule 11 Sanctions Motion for the filing of a frivolous lawsuit.

Leitner claims that for over 30 years she was **abused**, mistreated and generally “controlled” by Defendant Kunwar Surendra Kumar (“Kumar”).<sup>1</sup> She claims she joined a “family” of friends that shared spiritual goals, and from the 1970s to 2003 she lived with this family first in New York and then in California based on mutual assurances by each of the Defendants that they would provide resources and support for one another. After sharing their lives together for 33 years, Leitner decided in 2003 to leave the family and live on her own, eventually moving to Oregon. When she left this family in 2003, she claimed she was owed the money that she had contributed to the family over those years and wanted to be “paid back,” although she never even claimed how much she was owed. The family members disagreed that Leitner was owed money or anything and did not “return” monies to her.

Leitner waited for 10 years to file this lawsuit. She claims no impediment to filing it earlier and within the statute of limitations, she just did not bother to do so. Leitner now claims she is entitled to collect some undetermined, and unspecific share of everything the “family” and its members (some who are no longer with the family, and some who are deceased) accumulated over those 33 years. In doing so, she makes the implied assumption that her “contributions” to the family over 33 years exceeded what the family provided to her. Leitner takes her claim one step further by asking that the “family” - however that may be defined - be “dissolved” and that the Court order an “accounting” of this family of friends **finances** for the last 40 years. There is no legal basis to ask this Court to take on such an amorphous task.

Leitner's various claims, which are subject to statutes of limitations of 1 to 4 years, are all time-barred since they accrued no later than 2003 when she left the family. Accordingly, the least stale claim, with a 4-year statute of limitations, became stale six years ago in 2007, at the latest. Since the Complaint here was not filed until October 2013, all claims are absolutely barred by the statute of limitations.

As set forth herein, Leitner's claims are hopelessly time-barred. Even if they were timely, they are substantively untenable. Specifically, Leitner's allegations as to what she was assured, the nature and terms of the alleged assurances, what she provided and what she received are too vague and amorphous to state valid claims for recovery. And, there is no cure that will make them valid.

Accordingly, each of Leitner's claims should be dismissed with prejudice.

## **II. ALLEGATIONS AND FACTUAL BACKGROUND**

In 1970, Leitner began attending meditation sessions held by Kunwar Surendra Kumar (“Kumar”). (Complaint ¶ 13-14) Shortly thereafter, she joined Kumar’s “circle,” which Leitner refers to as the “Family.” *Id.* at ¶ 16 Leitner claims that she spent 33 years with the “Family,” which consists of approximately 15 individuals that have contributed funds to their shared pool of assets. Leitner also refers in the Complaint to Defendant Sadhana Temple, a not-for-profit 501(c)(3) corporation; however, the Family’s funds are unrelated and distinct from Sadhana Temple’s funds. (Complaint ¶ 38, Exh. 1 at 43:7-48:5)<sup>2</sup>

Defendants Aschner, Carson and Thompson are members of the Family. *Id.* at ¶¶ 6-8. Leitner left the Family in 2003 (i.e., she joined in 1970 and spent 33 years with the Family). (Complaint ¶¶ 2, 16, 50; Declaration of James E. Fitzgerald (“Fitzgerald Decl.”), at ¶ 2, Exh. 1, ¶ 13)

Leitner alleges that she contributed all of her “inheritance,<sup>3</sup> income ... work, time and labor” to the Family for 33 years. (Complaint ¶ 40, 50) Leitner lived with the other Family members and they pooled their resources together. *Id.* at ¶ 38. Leitner alleges she was promised that if she contributed her resources, she “would have an equal share of the combined pooled resources,” and that her “future would be taken care of” *Id.* Leitner alleges she was promised that the funds she contributed would be “available upon her request.” (Complaint ¶ 38) The Family members share their assets with an understanding that the assets contributed would remain with the Family should the member leave. (Complaint ¶ 38, Exh. 1 at 65:4-15)

In 2003, Leitner “asked [Kumar] for [her] money back” when she left the Family. (Fitzgerald Decl. ¶ 2, Exh. 1 at ¶ 13) Kumar refused her request. *Id.* In October 2010, Leitner declared she “keeps hoping [Kumar] will do the right thing and open his heart and send me my money.” (Fitzgerald Decl., ¶ 2, Exh. 1 at ¶ 12) In 2012, nine years after her prior demand, Leitner demanded her “share” of “pooled resources” again. (Complaint at ¶ 42) Alleging she was assured she would be provided a retirement at the “date of maturing,” the Complaint notes the demand in 2012 was occasioned by Leitner approaching the “retirement age” of 65 years old. (Complaint ¶ 38-39) Leitner has received Social Security retirement benefits since at least October 2010. (Fitzgerald Decl., ¶ 2, Exh. 1 at ¶ 13) Leitner has not returned to the Family or otherwise associated with the Family since she left in 2003. (Complaint ¶ 2; Fitzgerald Decl., ¶ 2, Exh. 1 at ¶ 12)

## **III. ARGUMENT**

### **A. THE STANDARD FOR A RULE 12 MOTION TO DISMISS**

To survive an FRCP Rule 12(b)(6) motion to dismiss, “a complaint must contain sufficient factual matter ... to ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) See also, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Under *Iqbal*, a court must conduct a two-part analysis. First, the court must accept as true well-pleaded factual allegations, but should disregard “bare assertions” and “legal conclusions.” *Id.* at 1951. Second, the court must determine whether the complaint’s non-conclusory “factual content” is “plausibly suggestive of a claim.” *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009) (citing *Iqbal*, 556 U.S. at 678). The “plausibility” determination is a “context-specific task” requiring the court to “draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679 (2009). To be plausible, a complaint must allege more than the mere “possibility” of a claim. *Id.*

### **B. LEITNER’S CLAIM FOR PROMISSORY ESTOPPEL IS FRIVOLOUS**

#### **1. The Promissory Estoppel Claim is Time-Barred.**

Under California law, a two-year statute of limitations applies to a promissory estoppel claim. Cal. Civ. Proc. Code § 339(1); See *Iverson, Yoakum, Papiano & Hatch v. Berwald*, 76 Cal. App. 4th 990, 996 (1999). Generally, the limitations period begins

to run upon “the occurrence of the last element essential to the cause of action.” *Howard Jarvis Taxpayers Ass'n v. City of La Habra*, 25 Cal. 4th 809 (2001).

The elements of a promissory estoppel claim are (1) a clear promise, (2) reliance, (3) substantial detriment, **and** (4) damages measured by the extent of the obligation assumed and not performed. *Toscano v. Greene Music*, 124 Cal. App. 4th 685, 692 (2004).

In this case, the promissory estoppel claim, if any, accrued when Leitner left the Family in 2003. Leitner has alleged that she was assured a share of the “combined resources” in exchange for her “resources, income, labor, time and inheritance.” (Complaint ¶ 38) By her admission, the Family stopped providing Leitner **financial** and emotional support in 2003. Each element of that claim occurred once Leitner contributed money or services in reliance on the Defendants' assurances, which were made no later than 2003. Thus, the limitations period for promissory estoppel ran in 2005, at the latest. See *Cochran v. Cochran*, 56 Cal. App. 4th 1115, 1122-23 (1997) (claim for support from former partner in non-marriage romantic relationship accrues when partner breaches duty to provide support).

This general accrual rule does not apply when the essence of a claim is grounded in fraud since accrual of fraud claims is governed by the “discovery rule,” i.e., when “the aggrieved party discovers the facts constituting the fraud.” *Leeper v. Beltrami*, 53 Cal. 2d 195, 207-208 (1959). Actual knowledge on the part of a plaintiff is not required in this context. Instead, the statute begins to run as soon as the aggrieved party becomes aware of facts that would “make a reasonably prudent person suspicious of fraud.” *Cleveland v. Internet Specialties W., Inc.*, 171 Cal. App. 4th 24, 31 (2009) (internal citations omitted). The aggrieved party also has a duty to exercise “reasonable diligence” to discover the facts. *Parsons v. Tickner*, 31 Cal. App. 4th 1513, 1525 (1995). Indeed, “it is plaintiff's burden to establish facts showing that he was not negligent in failing to make the discovery sooner and that he had no actual or presumptive knowledge of facts sufficient to put him on inquiry.” *CMACO Auto. Sys., Inc. v. Wanxiang Am. Corp.*, 589 F.3d 235, 248 (6th Cir. 2009) (applying California law in dismissing promissory estoppel claim under 12(b)(6)).<sup>4</sup>

Even under the discovery rule, Leitner's promissory estoppel claim is time-barred because it accrued, at the latest, in 2003 when Leitner left the Family.

The essence of the Complaint is that Leitner was assured a share of the Family resources. When Leitner voluntarily left to live on her own in 2003, the Family stopped providing Leitner support. Thus, assuming for the sake of argument that Leitner was entitled to a share of the “combined resources,” her claim became due. Leitner was placed on notice in 2003 that she could not expect her funds back by an unequivocal denial of her request. Certainly, a reasonable person would have reason to suspect the Family did not intend to provide her funds, and thus - to the extent that decision gave rise to a claim - it accrued at that time, and no later. *Cleveland*, 171 Cal. App. 4th 24, 31 (2009) (discovery rule delays accrual until Leitner learns fact that would cause reasonable person to suspect fraud). Indeed, in 2010, Leitner demonstrated an expectation that she would not receive any funds in the future, explaining that she was “hoping” that Kumar would “do the right thing and open his heart and send [her] money” back. (Fitzgerald Decl., ¶ 2, Exh. 1 at ¶ 13)

Leitner had a duty to exercise reasonable diligence to discover the true facts. See *Miller*, 33 Cal. 3d at 874 (imposing duty on plaintiff to inquire as to true facts and rejecting plaintiff's argument that inquiry with defendant would have been unavailing). After learning the Family did not intend to give her “money back” in 2003, she sat by silently for a decade, allegedly assuming the Family would pay her at the arbitrary “retirement age” of 65 years old. Leitner claims she did so based on a vague promise that she would be provided a retirement as a member of the Family, without any assurances as to the terms, vesting, amount or length of time she would be provided or, crucially, whether she would be provided a retirement if she were to leave the Family. Leitner failed to fulfill her duty to inquire, which is an additional reason she cannot now avail herself of the “discovery rule.” In sum, Leitner's promissory estoppel claim accrued at the latest in 2003. It is now time-barred.

## **2. The Promissory Estoppel Claim Fails.**

As stated above, the first element needed to establish a valid claim for promissory estoppels is a clear promise. *Toscano v. Greene Music*, 124 Cal. App. 4th 685, 692. Although equitable in nature, promissory estoppel is akin to a cause of action based on contract, except that the consideration needed to form an enforceable contract is provided by detrimental reliance. *Id.* at 692-93; *Signal Hill Aviation Co., Inc. v. Stroppe*, 96 Cal. App. 3d 627, 640 (1979).

Crucially, Leitner fails to allege a “clear promise.” *Laks v. Coast Fed. Sav. & Loan Assn.*, 60 Cal. App. 3d 885, 891 (1976) (dismissing promissory estoppel claim because promise was not clear in that it required further negotiation of final terms). In *Mora v. U.S. Bank N.A.*, 2012 WL 2061629 (N.D. Cal. June 7, 2012), the plaintiffs alleged that someone on behalf of their lender “made a promise that [p]laintiffs would be approved for a loan modification on or about June 2009.” Someone on behalf of the defendant alleged that, if plaintiffs began making monthly trial payments on their loan, “[p]laintiffs would receive a permanent modification of the account after the third [payment],” and/or represented that making the trial payments “would lead to a permanent modification on their loan.” *Id.* The Court concluded the plaintiff failed to allege a “clear promise” because it was unclear what was promised to follow the interim payments: “did [the defendant] promise to agree to a permanent loan modification, or merely to review [p]laintiffs' application for one?” *Id.* Accordingly, the Court dismissed the complaint, concluding the [p]laintiffs had “made no more than conclusory allegations about an unspecified individual agreeing to a loan modification with unspecified terms at some point in the unspecified future ...” *Id.* (internal citations omitted).

Similarly, Leitner alleges here that the Defendants promised her that if she gave her “resources, income, labor, time and inheritance” that she would receive a share of the “combined resources” and her “future would be taken care of, including medical, retirement and all her needs ...” (Complaint ¶ 38) Leitner's Complaint does not allege a “clear promise,” as she has failed to set forth any meaningful terms of the promise beyond an assurance that her “future would be taken care of.” *Id.* Specifically, she fails to allege that there were any terms regarding a right to a share of “combined resources” upon departure from the Family's shared lifestyle. This is because the Family mutually understood a member would *not* be entitled to a share of the “combined resources” upon leaving the Family. (Complaint ¶ 38, Exh. 1 at 65:4-15) Lastly, Leitner fails to allege which of the Defendants made the alleged promise, instead pleading generally that the promise was made by each of them - even Sadhana Temple, a not-for-profit corporation. Leitner has failed to allege a “clear promise.” Therefore, the promissory estoppel claim should be dismissed.

## **C. LEITNER'S CLAIM FOR UNJUST ENRICHMENT HAS NO MERIT.**

### **1. The Unjust Enrichment Claim is Time-Barred.**

California's three-year statute of limitations for fraud or mistake applies to an unjust enrichment claim. *Federal Deposit Ins. Corp. v. Dintino*, 167 Cal. App. 4th 333, 348 (2008). Unjust enrichment is the “receipt of a benefit and [the] unjust retention of the benefit at the expense of another.” *Lectrodryer v. SeoulBank*, 77 Cal. App. 4<sup>th</sup> 723, 726 (2000). In 2003, Leitner demanded the money she alleges she was entitled to, but that demand was clearly rejected. At that point, she was aware of the facts giving rise to her unjust enrichment claim, and her claim accrued. Accordingly, the three-year limitations period for her unjust enrichment claim expired - at the latest - in 2006.

### **2. Leitner Fails To State A Meritorious Unjust Enrichment Claim.**

Unjust enrichment, under California law, is the “receipt of a benefit and [the] unjust retention of the benefit at the expense of another.” *Lectrodryer*, 77 Cal. App. at 726. Unjust enrichment is intended to provide plaintiffs recourse when a defendant has retained money that belongs to plaintiff; tort damages are not recoverable under an unjust enrichment theory. *Zumbrun v. University of Southern California*, 25 Cal. App. 3d 1, 14-15 (2000).

Stripping the Complaint of its vague assertions and legal conclusions, Leitner has failed to allege facts to state a plausible unjust enrichment claim. While she alleges she was not provided funds she contributed to the Family at the time she left, she has not alleged the amount of money or property she gave to the Family with any specificity. Instead, she alleges she provided her “**financial** contributions,” “labor” and “inheritance.” (Complaint ¶ 59) Likewise, she has not alleged the value of the resources and benefits **she received** as a member of the Family who shared in the “pooled resources.” Leitner boldly implies - more than ten years later - that her contributions to the Family exceeded what the Family actually **provided her** while she lived with them for 33 years. In other words, she has failed to provide the most basic factual support for a claim for unjust enrichment - receipt of a net gain of what she provided over what she was provided and the value of it.

In the same manner, Leitner alleges she was generally assured a retirement, but has not alleged facts to establish she has an equitable right to any funds, or any measurable amount thereof, upon leaving the Family. Indeed, as a member of the Family, Leitner enjoyed mutually beneficial **financial** and emotional support with other Family members at the time she allegedly contributed **financially**. (Complaint ¶ 38, Exh. 1 at 65:4-15) Moreover, the members of the Family had a mutual understanding that money contributed towards the Family's “pooled resources” would remain with the Family in the event a member left the Family (Complaint ¶ 38, Exh. 1 at 65:4-15) Leitner has not alleged facts establishing that she contributed more than she received, or that she was made any specific promises regarding her rights upon leaving the Family. Thus, Leitner has failed to adequately plead an unjust enrichment claim.

#### **D. LEITNER'S CLAIM FOR FRAUD IS FRIVOLOUS.**

##### **1. The Fraud Claim is Time-Barred.**

Under California law, the elements of fraud are: “(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.” *Lazar v. Super. Ct.*, 12 Cal. 4th 631, 638 (1996) (internal citations omitted); *Hackethal v. Nat'l Cas. Co.*, 189 Cal. App. 3d 1102, 1111 (1987). To be viable, a claim for fraud must be brought within three years. *Cal. Civ. Proc. Code § 338(d)*.

Leitner's alleges she joined the Family based on assurances that her “future would be taken care of,” and that she would have “an equal share of the combined pooled resources.” (Complaint ¶ 76) When Leitner left the Family, she demanded her money, and was refused. Since she did not bring her claim for fraud within three years of leaving the Family in 2003, it became time barred in 2006, at the latest. Accordingly, Leitner's claim for fraud is time-barred.

##### **2. The Fraud Claim Is Insufficiently Plead.**

Under **Federal Rule of Civil Procedure 9(b)**, a party alleging fraud must state with particularity the “circumstances constituting fraud.” This requires “an account of the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentations.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (internal quotation marks omitted); *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004). Moreover, it is insufficient to “set forth conclusory allegations of fraud ... punctuated by a handful of neutral facts.” *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985). Instead, the pleading must state what was “false or misleading about the purportedly fraudulent statement, and why it [was] false” at the time it was made. *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (2011) (internal quotations and citations omitted); *In re Stac Electronics Sec. Litig.*, 89 F.3d 1399, 1409 (9th Cir. 1996) (plaintiff must allege why statement was false at the time it was made). As the court explained in *Bly-Magee v. California*, 236 F.3d 1014, 1018 (9th Cir. 2001):

**Rule 9(b)** serves not only to give notice to defendants of the specific fraudulent conduct against which they must defend, but also to deter the filing of complaints as a pretext for the discovery of unknown wrongs, to protect defendants from the harm that comes from being subject to fraud charges, and to prohibit plaintiffs from unilaterally imposing upon the court, the parties and society enormous social and economic costs absent some factual basis. (internal quotation and alterations omitted).

Leitner's complaint fails to state what misrepresentations "Defendants" made to her with any specificity. Rather, she states in conclusory terms that Defendants promised "her earnings, income, time, and labor would be pooled into joint accounts ... whereby each member would have an equal share of the combined pooled resources." (Complaint ¶ 76) There are no factual allegations to suggest the nature and circumstances of the alleged representations. *Cafasso*, 637 F.3d 1047, 1055 (9th Cir. 2011) (quoting *Ebeid ex rel. United States v. Lungwitz*, 616 F.3d 993, 998 (9th Cir. 2010)) (heightened pleading standard for fraud requires complaint to identify "the who, what, when, where, and how of the misconduct charged."").

Leitner also fails to specify which Defendants specifically made the alleged representations. In some limited circumstances, a plaintiff can state a fraud claim without adhering to the general rule that the speaker must be identified by name. See *Odom v. Microsoft Corp.*, 486 F.3d 541, 554 (9th Cir. 2007) (consumer alleging fraud not required to recall name of "cash register employee" at Best Buy that swiped credit card in allegedly fraudulent transaction). However, Leitner's Complaint does not identify the individual making the misrepresentation, their position or the nature of their representation. Moreover, there is no factual context to render the individual's name unnecessary in this case. Cf. *Id.* (plaintiff asserting fraud did not need to allege name of "cash register employee" to survive motion to dismiss because plaintiff plead sufficient other facts, including date, location and details of conversation leading up to allegedly fraudulent practice during consumer transaction). Aside from failing to attribute statements to any of the individual defendants, Leitner alleges Sadhana Temple (a not-for-profit corporation) made the misrepresentations - without any explanation for attributing fraudulent statements to a corporate entity. In short, Leitner's allegations do not satisfy the heightened level of specificity required on a claim for fraud. Accordingly, Leitner's fraud claim should be dismissed.

#### **E. LEITNER'S CLAIM FOR BREACH OF FIDUCIARY DUTY IS NOT VIABLE.**

##### **1. The Breach of Fiduciary Duty Claim is Time-Barred.**

Where the gravamen of a complaint is that the defendant(s) actions constituted actual or constructive fraud, a breach of fiduciary duty claim is subject to the three-year statute of limitations for fraud. *City of Vista v. Robert Thomas Securities, Inc.*, 84 Cal. App. 4th 882, 889 (2000). Otherwise, a breach of fiduciary duty claim is subject to California's catch-all statute providing a four-year statute of limitations for causes of actions not otherwise provided for in the California Code of Civil Procedure. *Stalberg v. Western Title Ins. Co.*, 230 Cal. App. 3d 1223, 1230 (1991). To establish a breach of fiduciary duty, a plaintiff must demonstrate "the existence of a fiduciary relationship, breach of that duty and damages." *Charnay v. Cobert*, 145 Cal. App. 4th 170, 182 (2006).

The "discovery rule" applies to a breach of fiduciary duty claim. Moreover, as a general rule, "when a potential plaintiff is in a fiduciary relationship with another individual, that plaintiff's burden of discovery is reduced and he is entitled to rely on the statements and advice provided by the fiduciary." *Sherman v. Lloyd*, 181 Cal. App. 3d 693, 698 (1986). Crucially, however, the "reduced" burden of discovery applies only so long as the fiduciary relationship exists. *Sanchez v. S. Hoover Hosp.*, 18 Cal. 3d 93, 102 (1976) (noting reduced burden applies while fiduciary relationship exists; concluding plaintiff was aware of doctor's malpractice at time she left doctor's care).

Here, regardless of the trust or confidence Leitner once placed in the Family or any individual members, any possible fiduciary relationship ended when she left the Family in 2003. Leitner cannot avail herself of a "reduced" burden of discovery for the years after she voluntarily left the Family relationship. Moreover, Leitner's claim would still have accrued applying a "reduced" burden of discovery, because, as discussed above, it was not at all a secret that the Family did not intend to pay her after she left in 2003. See *Alfaro v. Cnty. Hous. Imp. Sys. & Planning Ass'n, Inc.*, 171 Cal. App. 4th 1356, 1394-95 (2009) ("A person in a fiduciary relationship may relax, but not fall asleep."); *Miller*, 33 Cal. 3d at 874-75 (where a fiduciary "became aware of facts which would make a reasonably prudent person suspicious, she had a duty to investigate further, and was charged with knowledge of matters which would have been revealed by such an investigation").

If she ever had one, Leitner's breach of fiduciary duty claim accrued in 2003 and became time-barred - at the latest - in 2006 or 2007.

## **2. No Fiduciary Duty Was Owed By The Defendants To Leitner.**

To establish a cause of action for breach of fiduciary duty, a plaintiff must demonstrate the existence of a fiduciary relationship, breach of that duty and damages. *Charnay v. Cobert*, 145 Cal. App. 4th 170, 182 (2006).

Leitner has failed to allege the predicate facts necessary to establish the existence of a fiduciary relationship between herself and Family members. Leitner alleges that she "entrusted her **financial** and personal matters" to each of the "Defendants," and that each of the Defendants "convinced, controlled, manipulated and coerced her." (Complaint ¶¶ 92, 94) She further alleges "Defendants also created a fiduciary duty to Leitner to protect her spiritual, physical and **financial** interest through their promises and representations." (Complaint ¶ 100) However, general allegations that Leitner trusted Defendants and entrusted her funds to them are not sufficient. Indeed, the "mere placing of a trust in another person does not create a fiduciary relationship." *Zumbrun v. University of Southern California*, 25 Cal. App. 3d 1, 13 (1972).

Significantly, Leitner has also failed to allege specific facts regarding any individual defendant to establish a special relationship; instead attributing each broad allegation to each Defendant. She even alleges, incorrectly, a fiduciary relationship with Sadhana Temple, a not-for-profit corporation. Leitner has not specified which of the Defendants she entrusted with any specificity to establish a fiduciary relationship. Accordingly, Leitner has failed to state a cognizable cause of action for breach of fiduciary duty.

## **F. LEITNER'S CLAIM FOR CONSTRUCTIVE FRAUD IS NOT VIABLE**

### **1. The Constructive Fraud Claim is Time-Barred.**

California's three-year statute of limitations for fraud claims applies to constructive fraud claims as well. *Day v. Greene*, 59 Cal. 2d 404, 411 (1963). Constructive fraud arises from a breach of a "legal or equitable duty, trust, or confidence," i.e. a "quasi-fiduciary relationship," that - if not actually fraudulent - has "all the actual consequences and all the legal effects of actual fraud." *Barrett v. Bank of Am.*, 183 Cal. App. 3d 1362, 1368-69 (1986). As set forth above, even assuming Leitner was in a fiduciary relationship with some or all of the Defendants, Leitner's claims accrued in 2003 when she severed ties with the Family; requested her "money back"; and received an unequivocal denial of her request.

### **2. The Constructive Fraud Claim is Insufficiently Plead.**

To state a claim for constructive fraud under California law, a plaintiff must allege: (1) a fiduciary or confidential relationship; (2) an act, omission or concealment involving a breach of that duty; (3) reliance; and (4) resulting damage. *Cal. Civ. Code § 1573; Dealertrack, Inc. v. Huber*, 460 F. Supp. 2d 1177, 1183 (C.D. Cal. 2006). A plaintiff need not establish fraudulent intent to assert a viable constructive fraud claim as long as the parties are in a fiduciary or confidential relationship. *Sacramento E.D.M., Inc. v. Hynes Aviation Indus., Inc.*, 2013 WL 4407469 (E.D. Cal. Aug. 15, 2013). Yet a plaintiffs' constructive fraud claim is still subject to the particularity requirement under Rule 9(b). *Id.*

Leitner's constructive fraud claim does not satisfy Rule 9(b) for the same reasons her fraud claim is not viable. She alleges "Defendants, collectively and individually, convinced, controlled, manipulated and coerced" her to contribute her income and inheritance and that she would be "taken care of." (Complaint ¶ 58) However, Leitner fails to allege the specifics of any representation or the terms represented regarding a member's right to funds upon leaving the Family. See *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (quoting *Ebeid ex rel. United States v. Lungwitz*, 616 F.3d

993, 998 (9th Cir.2010)) (heightened pleading standard for fraud requires complaint to identify ““the who, what, when, where, and how of the misconduct charged.””).

Leitner's allegations for her constructive fraud claim essentially mirror those for her breach of fiduciary duty claim. But, just like the breach of fiduciary duty claim, Leitner fails to identify which acts were taken by which Defendants, and thus has failed to establish a relationship of trust or confidence with any given Defendant. Accordingly, her constructive fraud claim is insufficiently plead against each of the Defendants.

## **G. LEITNER'S CLAIM FOR CONVERSION LACKS ANY MERIT.**

### **1. The Conversion Claim is Time-Barred.**

Under California law, conversion of tangible personal property has a three-year statute of limitations. [Cal. Civ. Proc. Code § 338\(c\)](#). To establish a cause of action for conversion, it must be alleged that: (a) plaintiff had the right to possession or ownership of tangible personal property at the time of the conversion; (b) defendants actually and substantially interfered with that right; and (c) plaintiff suffered damages. [Messerall v. Fulwider](#), 199 Cal. App. 3d 1324, 1329 (1988).

A claim for conversion generally accrues on the date of the taking of personal property, even if the plaintiff is unaware of the taking at that time. *See AmerUS Life Ins. Co. v. Bank of America, N.A.*, 143 Cal. App. 631, 639 (2006). Here, the essence of Leitner's conversion claim is that Defendants mislead Leitner to “turn over her income and inheritance money and all **financial** benefits” while she was a member of the Family. (Complaint, ¶ 108) Clearly, any conversion occurred no later than when Leitner left the Family in 2003 - when she alleges she stopped contributing to the Family. (Complaint ¶ 2, 16)

Courts have recognized that the limitations period on a conversion claim founded on a fraudulent concealment or breach of fiduciary duty theory does not run before the plaintiff “discovers or should have discovered” that the property was wrongfully taken. [Naftzger v. American Numismatic Soc.](#), 42 Cal App 4th 421, 428-29 (1996). As set forth above, Leitner cannot seek shelter from this “discovery rule” because - even accepting her allegations of fraudulent concealment as true - she knew or should have known that Defendants did not intend to pay her anything in the future at the time she left the Family in 2003, ten years ago. Accordingly, Leitner's conversion claim is time-barred.

### **2. The Conversion Claim Fails Because Leitner Fails To Identify Specific Funds That Were Converted.**

To establish a cause of action for conversion, it must be alleged that: (a) plaintiff had the right to possession or ownership of specific, tangible personal property at the time of the conversion; (b) defendants actually and substantially interfered with that right; and (c) plaintiff suffered damages. [Messerall v. Fulwider](#), 199 Cal. App. 3d 1324, 1329 (1988). And, “[m]oney cannot be the subject of a cause of action for conversion unless there is a specific, identifiable sum involved ...” [McKell v. Washington Mutual, Inc.](#), 142 Cal. App. 4th 1457, 1491 (2006). Plaintiff has not met her burden. She alleges that the Defendants converted “the money she had worked for and had inherited from her parents” and that she is entitled to money that she alleges was placed in an unspecified retirement fund for her benefit. (Complaint ¶ 110) But, nowhere in the Complaint does Leitner identify the sum of money on which her claim is based. The Complaint is devoid of any allegation of a “specific, identifiable sum of money” allegedly converted by the Defendants. Accordingly, the conversion claim cannot be sustained, and therefore should be dismissed.

## **H. LEITNER'S CLAIM FOR **FINANCIAL ELDER ABUSE** IS TIME-BARRED AND LACKS MERIT.**

An action for damages for **financial elder abuse**, including taking by undue influence, must be commenced within 4 years after the plaintiff discovers or has reason to discover the facts constituting the **abuse**. [Cal. Welf. & Inst. Code § 15657.7](#). To establish **elder abuse**, a plaintiff must show defendant was guilty of “recklessness, oppression, fraud, or malice in the commission of

[physical, neglectful, or financial elder abuse].” *Benun v. Super. Ct.*, 123 Cal. App. 4th 113, 119 (2004) (citing Cal. Welf. & Inst. Code § 15657).

An **elder** is “a person residing” in California that is “65 years or older.” Cal. Welf. & Inst. Code § 15610.27; *Taguinod v. World Sav. Bank, FSB*, 755 F. Supp. 2d 1064, 1074 (C.D. Cal. 2010) (granting motion to dismiss because plaintiffs “failed to plead how they are ‘elders’” within the meaning of Cal. Welf. & Inst. Code § 15610.27). Leitner’s **elder abuse** claim is premised on acts she claimed occurred during her time as a member of the Family. However, she was at most 56 years old when she severed ties with the Family in 2003.<sup>5</sup> Accordingly, the alleged physical and emotional **abuse** ended well before she reached the statutory minimum age of 65 years old, ten years after she left the Family.

Leitner may further claim that the Defendants committed **elder abuse** after she left the Family, and after she turned 65 years old, on the grounds that the Defendants’ decision not to give her a share of the “combined resources” in 2003 constituted **abuse**. She asserts such **abuse** occurred in 2012 because, after a decade, she made the same request she had in 2003 and received the same response. The alleged conduct in 2012 does not constitute **elder abuse**. See *Benun*, 123 Cal. App. 4th at 119 (to recover for **elder abuse**, plaintiff must establish “recklessness, oppression, fraud, or malice ...” by the **abuser**). Leitner’s allegations do not support such an alternative claim for **elder abuse**.

There is perhaps an even more fundamental flaw in Leitner’s pleading. She fails to plead facts to establish that she came within the statutory definition of “**elder**” at any time since she lives in Oregon. “**Elder**” is defined as a resident of *California* that is 65 years old or older. (Cal. Welf. & Inst. Code ¶ 15610.27), Leitner resides in Oregon. (Complaint ¶ 3)

For all of these reasons, Leitner’s claim for **elder abuse** fails as a matter of law and should be dismissed.

## I. LEITNER’S CLAIM FOR INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS CANNOT BE SUSTAINED.

### 1. This Claim is Time-Barred.

Under California law, an Intentional Infliction of Emotional Distress (“IIED”) claim is subject to the one-year statute of limitations provided by California Code of Civil Procedure Section 340(3); *Bennett v. Suncloud*, 56 Cal. App. 4th 91, 97 (1997). The IIED claim accrued when the alleged **abuse** ended in 2003, at the absolute latest.

In some instances, allegations of several instances of **abuse** can toll the statute of limitations. In *Pugliese v. Super. Ct.*, 146 Cal. App. 4th 1444 (2007), a wife brought an action in April 2004 against her former husband in tort for emotional and physical **abuse** that spanned from 1989 until the final instance of **abuse** in April 2004—the same month she filed her action. *Id.* at 1447. The court construed the years of domestic **abuse** as “separate offenses of assault, battery and intentional infliction of emotional distress,” and held that under the continuing tort doctrine the statute of limitations did not begin to run until the “last act” of **abuse**. *Id.* at 1452. The continuing tort doctrine treats a series of **abusive** acts as one act for limitations purposes, but it does not operate to extend the limitations period past the “last act.” See *DeRose v. Carswell*, 196 Cal. App. 3d 1011, 1017 (1987) (action for emotional distress caused by sexual **abuse** suffered by plaintiff as a child barred because she had a right to sue for immediate harm at time of the **abuse**).

Leitner’s Complaint provides extensive *allegations* of physical and psychological **abuse**. While these allegations are entirely unfounded, more crucially for purposes of this motion the alleged **abuse** ended when Leitner severed all ties from the Family in 2003. Leitner’s claim for IIED accrued at that time, and not any later. Thus, Leitner’s IIED claim accrued in 2003 and has been time-barred since 2004. It should be dismissed.

### 2. The IIED Claim Has No Substantive Merit.

Leitner has not stated a valid cause of action for IIED against the Defendants. The elements of a prima facie case of intentional infliction of mental distress are (1) outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe emotional distress suffered by plaintiff and (4) actual and proximate causation of the emotional distress. *Bogard v. Empls Casualty Co.*, 164 Cal. App. 3d 602, 616 (1985).

In determining whether a defendant's conduct is outrageous, "it is not enough that the defendant has acted with an intent which is tortious or even criminal ... or that his conduct has been characterized by malice or a degree of aggravation which would entitle the plaintiff to punitive damages in another tort." *Cochran v. Cochran*, 65 Cal. App. 4th 488, 496 (1998). Rather, liability exists only where the conduct is independently "so extreme in degree as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized society. *Id.*

Here, Leitner has not alleged sufficient facts to establish the first element of an IIED claim as to Sadhana Temple, Aschner, Carson, or Thompson. Leitner alleges Defendant Kumar **abused** her physically and mentally. Besides stating in conclusory terms that the other defendants coerced and controlled her and her **finances**, Leitner states no actual facts that are specific to Sadhana Temple, Aschner, Carson or Thompson. There is nothing in the Complaint to suggest that any particular actions by these Defendants were so extreme as to exceed all bounds of decency.

#### **J. LEITNER'S CLAIM FOR DISSOLUTION OF JOINT VENTURE LACKS MERIT.**

##### **1. The Claim For A Dissolution of Joint Venture Is Time-Barred.**

Under the Uniform Partnership Act ("UPA") of 1994, partners have a right to bring an action against other partners for dissolution of the partnership. *Cal. Corp. Code § 16405*. Unlike the former UPA, a partnership is not dissolved each time a partner disassociates.

The accrual of, and any time limitation on, a right of action for a partner's claim to seek dissolution of partnership under *Section 16405* is "governed by other law." *Cal. Corp. Code § 16405*. When a partners' respective rights and obligations are not spelled out in a written or oral agreement, a partner must bring an action pertaining to the partners' respective rights within, at most, four years. *See Manok v. Fishman*, 31 Cal. App. 3d 208, 213 (1973) (applying four -year "catch-all" statute of limitations provided by *California Code of Civil Procedure § 343* to partner's action against other partners for accounting upon exclusion from partnership affairs).

California case law provides that a partner's right to bring an action to recover a share of partnership assets accrues at the time the partner severs ties with the partnership. *Manok v. Fishman*, 31 Cal. App. 3d 208, 211 (1973) (cause of action for an accounting upon dissolution accrued when managing partners wrongfully excluded plaintiffs from partnership affairs); *See Estate of Fincher*, 119 Cal. App. 3d 343, 347-49 (1981) (statute of limitations for accounting began running when plaintiff "abandoned the partnership" regardless of whether the plaintiff and defendant owed each other a fiduciary duty while they were together as non-married couple).

Here, assuming *arguendo* that the Family is a partnership or joint venture and that Leitner has a right to bring an action for dissolution of the partnership, the claim to enforce that right accrued at the time she dissociated herself from the partnership in 2003. Because she seeks to dissolve the Family a decade after she "abandoned" the alleged joint venture, her claim is time-barred.

##### **2. The Dissolution of Joint Venture Claim Lacks Merit Because The "Family" Is Not A Partnership Or Joint Venture.**

A partnership is defined as "an association of two or more persons to carry on as co-owners a business for profit." *Cal. Corp. Code. § 16101(9)*.<sup>6</sup> Whether a partnership has been created may be inferred from the parties' conduct. *See Weinerv. Fleischman*,

54 Cal. 3d 476, 482-83 (1991). The partners must share “management and control” of management of the business. *Billups v. Tiernan*, 11 Cal. App. 3d 372, 379 (1970). Ultimately, “the distinguishing feature of partnership” is “the association of two or more persons for the purpose of carrying on a business together,” rather than an agreement to share profits. *Auditorium Co. v. Barsotti*, 40 Cal. App. 592, 596 (1919). Social or fraternal groups have been distinguished from partnerships. See *Sec.-First Nat. Bank of Los Angeles v. Cooper*, 62 Cal. App. 2d 653, 667 (1944) (The Elk's Lodge is not a business for profit, and thus not a partnership).<sup>7</sup>

Here, the Family is not a partnership or a joint venture because it never operated as a business and was never intended as a business for profit. Instead, as Leitner alleges she was part of a “family.” While the Family pooled resources and shared assets, they were not carrying on a business. Instead, they provided emotional support, shared common spiritual and religious beliefs and pooled their resources to purchase items a “family” typically shares (food, shelter, etc.).

In trying to classify the Family as a joint venture, Leitner alleges that Defendants hold joint bank accounts and purchased property in the names of multiple Family members. But it is well-recognized that “mere common ownership of property” alone does not establish a partnership. *Billups v. Tiernan*, 11 Cal. App. 3d 372, 379 (1970). Here, the partners/Family members shared their lives together, but did not carry on a business. Accordingly, Leitner's attempt to dissolve the Family is meritless, and her claim should be dismissed.<sup>8</sup>

#### **K. THE ACCOUNTING CLAIM IS TIME-BARRED AND LACKS MERIT.**

Where partners' respective rights and obligations are not spelled out in a written or oral agreement, a duty to account is implied by law, and an action for an accounting is subject to California Code of Civil Procedure § 343, California's catch-all providing a four-year statute of limitations for causes of actions not otherwise provided for in the Code. *Manok v. Fishman*, 31 Cal. App. 3d 208, 213 (1973); *Jefferson v. J.E. French Co.*, 54 Cal. 2d 717, 719 (1960).

As discussed above, Leitner has failed to allege the Family is a partnership. Thus, Leitner is not entitled to an “accounting of the entire business” because there was no business (Complaint, p. 41). Even assuming that Leitner has a right to seek a partnership accounting, the claim to enforce that right accrued at the time she dissociated herself from the Family in 2003. *Manok*, 31 Cal. App. 3d at 211 (cause of action for an accounting accrued when managing partners wrongfully excluded plaintiffs from partnership affairs); See *Estate of Fincher*, 119 Cal. App. 3d 343, 347-49 (1981) (statute of limitations for accounting began running when plaintiff “abandoned the partnership” regardless of whether the plaintiff and defendant owed each other a fiduciary duty while they were together). Thus, the time for a partner to bring an action for a partnership accounting accrues when the partner dissociates from the partnership. Since Leitner left the Family in 2003, the Claim for an accounting - brought for the first time ten years later - is time-barred.

#### **IV. CONCLUSION**

For many years, Leitner has sat on whatever rights she might have had against the Defendants. Her efforts to resurrect those claims flies in the face of clear statutes of limitations and the whole purpose behind them. Moreover, and as set forth above, Leitner's claims are not viable on a substantive basis. Indeed, Leitner's claims are so specious that Rule 11 sanctions are in order.

For the foregoing reasons, Defendants Aschner, Carson, Thompson and Sadhana Temple respectfully request that this Court dismiss all of Leitner's claims with prejudice.

Respectfully submitted,

STROOCK & STROOCK & LAVAN LLP

JAMES E. FITZGERALD

BRYAN M. WITTLIN

By: /s/ James E. Fitzgerald

James E. Fitzgerald

Attorneys for Defendants

SadhanaTemple of New York, Inc., Sarah Carson, Naomi Aschner And Barbara Thompson

Footnotes

- 1 Stroock & Stroock & Lavan LLP does not represent Defendant Kumar, who has not been served.
- 2 Leitner has used excerpts from the deposition of Defendant Sarah Carson taken two years ago in an unrelated case in an attempt to support her allegations.
- 3 In the Complaint, Leitner claims her inheritance was \$12,000.
- 4 In *Miller v. Bechtel*, 33 Cal. 3d 868 (1983), plaintiff brought an action in 1978 seeking to set aside a portion of her marital settlement agreement with her former husband that she signed in 1971. She alleged that her consent to the agreement was based on fraudulent misrepresentations as to the value of stock in her former husband's closed corporation. When she agreed to the settlement she was unaware that the stock was valued based on a shareholder vote rather than an objective measure. She claimed she did not inquire about the valuation method because the closed corporation "jealously guarded" its **financial** records. *Id.* At 874. The California Supreme Court held her claims for fraud and/or breach of contract were time-barred because she was on constructive notice of the value method at the time she entered the agreement. *Id.* at 874-75. The Court rejected plaintiff's argument that she did not have a duty to inquire as to the valuation method, and instead "charged [her] with knowledge" of facts she would have discovered. *Id.*
- 5 Leitner alleges she was born on XX/XX/1947. See Complaint at ¶ 116.
- 6 While Plaintiff repeatedly asserts that the Family is a "joint venture," a partnership and joint venture are "virtually the same." *Weiner v. Fleischman*, 54 Cal. 3d 476, 482 (1991). While a joint venture—unlike a partnership—usually involves a single business transaction, courts "freely apply partnership law to joint ventures when appropriate." *Id.* Thus, the Family is not a joint venture for the reasons it is not a partnership set forth in this Section.
- 7 Courts have regularly distinguished between "business establishments" and "charitable, expressive, and social organizations" in other contexts, as well. See, e.g., *Curran v. Mount Diablo Council of the Boy Scouts*, 17 Cal. 4th 670, 696 (1998) (noting the Boy Scouts were not a "business establishment" subject to state civil rights statute, explaining that "although the Boy Scouts engaged in business transactions with nonmembers on a regular basis, through the operation of retail stores and the licensing of the use of its insignia, such transactions were distinct from the organization's core functions ...").
- 8 Moreover, Plaintiff has failed to name the entity she seeks to dissolve - the Family.